IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.307 OF 2004

Smt Bhikibai D. Santokchand and anr. ... Petitioners

v/s

Narpatraj B. Mehta and others ... Respondents

Mr A.Y. Bookwala i/b Mr Y.K. Sharma for Petitioners.

Mr P.K. Samdani with Mr Chetan Kapadia i/b M/s Basant Tilokani and Co. for Respondents.

CORAM : D.K. DESHMUKH J.

DATE : 29TH AUGUST 2005.

P.C. :-

1. By this petition, the petitioners challenge the award made by the learned Arbitrator dated 31st March 2004. The main challenge is to the order dated 19th March 2004 made by the Arbitrator holding that his mandate has not come to an end. The facts that are material and relevant for deciding the point involved in this petition are that in suit No.2335 of 1994, the parties filed consent minutes of order and the parties decided to refer and disputes to Arbitrator. Clause 6 of those consent minutes of order reads as under :-

> "6. The Arbitrator shall dispose of the reference within a period of 4 months from the date of entering upon the reference and the parties shall cooperate and endeavour to dispose of the reference."

. An objection was raised before the learned Arbitrator on expiry of the period of four months from the date of the consent terms viz. 30th September 2003 that the mandate of the Arbitrator has come to an end. The learned Arbitrator decided that issue by the order dated 19th March 2004. The learned Arbitrator held that the award was to be made within a period of four months

from the date on which the Arbitrator entered into the reference. The learned Arbitrator held that the date of entering upon the reference is the date on which Arbitrator applies his mind to the merits of the rival contentions and that date was 28th January 2004 and therefore, the mandate of the Arbitrator had not come to end because the Arbitrator had the period of four months from 28th January 2004 at his disposal. The learned counsel appearing for respondents invited my attention to a judgment of the Division Bench of this Court in the case of M/s Jolly Steel Industries Pvt.Ltd., Poona v/s Union of India and another, reported in AIR 1979 Bombay 214 where the Division Bench has construed the phrase 'entering upon the reference'. According to the Division Bench, the date of entering upon the reference is the date on which the Arbitral Tribunal applies its mind to the contentions of the rival parties before it. The observations from paragraph 13 of the judgment of the Division Bench are relevant in this context, they read as under :-

> "13. Thus, the arbitration proceeding consists of two stages. One such stage consists of merely ministerial acts while the second stage consists of effective adjudicating acts in furtherance of the work of arbitration, namely of proceedings to

> decide controversies in between the parties, whether arising out of the main dispute or procedural aspects in the disposal thereof. The arbitrator cannot be said to have entered on the reference unless the second stage can be said to have been reached someway or the other."

. Perusal of the above observations of the Court shows that according to the Court, the Arbitral proceedings consists of two stages, one such stage consists of merely ministerial acts while the second stage consists of effective adjudicating acts in furtherance of the work of arbitration. The Arbitrator can be said to have entered the reference when the second stage begins. Therefore, the conclusion that has been reached by the learned Arbitrator is perfectly justified. The interpretation of the term 'entering upon reference' is accepted by the Division Bench. The only contention that was raised on behalf of the petitioners that the term 'entering upon reference' is the term which is to be found in the Arbitration and Conciliation Act 1940. So far as the present Act of 1996 is concerned, a departure has been made by the Legislature by enacting section 21. By section 21, it is clearly laid down that the arbitration proceedings commence on a date on which request for proceeding to

the Arbitrator is made by one party and is received by the other party. In my opinion, though it is true that section 21 of the 1996 Act in clear terms sets out that date of commencement of the arbitral proceedings is the date on which request made by one party to an arbitration agreement to refer the dispute to Arbitrator by other party, but this provision is subject to an agreement to the contrary between the parties. Section 21 reads as under :-

> "21. Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent."

. It is thus clear that in terms of section 21, normally arbitration proceedings commence on the date on which the request made by one party to refer the disputes between the parties to arbitration is received by the other party. However, parties to the agreement are free to fix any other date as the date for commencement of the arbitral proceedings. Therefore, the parties are free to say that the date of notice referred to in section 21 shall not be taken as date of commencement of arbitral proceedings, but some other

date be considered. In so far as the present case is concerned, the parties have relied on the term 'entering upon reference'. The said term was well defined under the 1940 Act. Therefore, it is safe to assume that while fixing the time limit to Arbitrator to make the award, the parties deliberately used the well defined term under the 1940 Act and therefore, so far as the arbitration proceedings between the parties to the petition are concerned, the date of commencement of the arbitral proceedings would be the date on which the Arbitrator enters upon the reference. The learned Arbitrator has found that that date is 28th January 2004. In this view of the matter therefore, I do find that the view that has been taken by the learned Arbitrator is a possible view on facts and in law and therefore, under the jurisdiction of this Court under section 34 of the said Act, I cannot disturb that finding. Admitted position is that after this order was made, the learned Arbitrator proceeded to deal with the matter on merits. The petitioners admittedly participated in the proceedings except for saying that the learned Arbitrator should not have immediately proceeded with considering the contention of the parties on merits, no challenge is raised in this award. Perusal of section 16(5) of the Arbitration Act shows that it is the scheme of the Act that if an objection to the jurisdiction of the Arbitral Tribunal is raised

after deciding that objection against the objector, the Arbitrator has to proceed with the arbitration proceedings immediately. I do not find that the course adopted by the learned Arbitrator is in any way contrary to any law. Hence, the award also cannot be entertained. In the result therefore, the petition fails and is dismissed. The petitioners are directed to pay costs of this petition as incurred by the respondents.

. Parties to act on the copy of this order duly authenticated by the Associate / Personal Secretary of this Court as true copy.

. Certified copy expedited.